

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FRANCESCO PORTELOS,

Plaintiff,

-against-

CITY OF NEW YORK; NEW YORK CITY  
DEPARTMENT OF EDUCATION; DENNIS WALCOTT,  
CHANCELLOR OF NEW YORK CITY DEPARTMENT  
OF EDUCATION; LINDA HILL, PRINCIPAL OF I.S. 49,  
IN HER OFFICIAL AND INDIVIDUAL CAPACITY,

Defendants

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**DEFENDANT'S NOTICE OF  
MOTION TO DISMISS  
THE COMPLAINT**

12 CV 3141 (RRM)(VMS)

**PLEASE TAKE NOTICE** that upon the accompanying Defendants' Memorandum of Law in Support of its Motion to Dismiss the Complaint dated November 21, 2012 and upon all the pleadings and proceedings herein, Defendants will move this Court, before the Honorable Roslynn R. Mauskopf, United States District Judge, at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, on Monday, December 17, 2012, for an order and judgment, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Complaint, and the case against Defendant City of New York; New York City Department of Education; Dennis Walcott, Chancellor of New York City Department of Education; and Linda Hill, Principal of I.S. 49; with prejudice, specifically, on the grounds that i) Plaintiff's First Amendment retaliation claim fails to state a claim for relief that is plausible on its face, and ii) the state law claim pursuant to New York State Civil Service Law § 75-B should similarly be dismissed for plaintiff's failure to state a

plausible claim; and that Defendants be granted costs, fees and disbursements together with such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the schedule endorsed by this Court, opposition papers if any, must be served on Defendants on or before December 10, 2012 and reply papers, if any, will be served upon Plaintiff on or before December 17, 2012, at which time Defendants will submit the fully briefed motion to the Court.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Rule 12(a)(4)(A), in the event that the Court denies this motion, in whole or in part, Defendants respectfully requests 21 days from the docketing of the order in which to serve an answer.

Date: New York, New York  
December 17, 2012

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**MICHAEL A. CARDOZO**

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Of Counsel: Jessica Giambrone

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Jgiambro@law.nyc.gov

Matter No.: 2012-029495

*Service of which is hereby acknowledged:*

....., N.Y. Dated: .....

Signed: .....

Attorney for: .....